UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON — SEATTLE

RITA LEAPAI, Plaintiff, v. COLLECTION BUREAU OF AMERICA, LTD., Defendant.	Case No. 2:16-CV-00766-JCC

PLAINTIFF'S MEMORANDUM OF LAW
IN OPPOSITION TO MOTION TO DISMISS

Plaintiff Rita Leapai ("Ms. Leapai") respectfully submits this Memorandum of Law in opposition to the motion to dismiss (the "Motion") filed by defendant Collection Bureau of America, Ltd. ("Defendant").

PRELIMINARY STATEMENT

By way of the Motion, Defendant seeks to dismiss Ms. Leapai's complaint for failure to state a claim upon which relief may be granted on the basis that Ms. Leapai did not plead factual allegations of FDCPA violations. As set forth in detail below, there is no basis for the Motion.

STATEMENT OF FACTS

On May 25, 2016, Ms. Leapai filed a complaint (the "Complaint") against Defendant setting forth one count alleging deceptive, misleading, and unfair debt collection practices in violation of the Fair Debt Collection Practices Act, 15 U.S.C.

§ 1692 *et. seq.* (the "FDCPA"). The alleged violations occurred as a result of Defendant's failure to remove or notate as disputed a debt reported to a credit reporting agencies *after* Ms. Leapai put Defendant on notice of a dispute by way of a letter dated November 19, 2015, which Defendant received. Months after, the debt reported by Defendant continued to appear without the proper dispute notation to the detriment of Ms. Leapai. As Defendant chose to report the alleged debt, which is a voluntary act on its part, it would behoove the Defendant to report it accurately. This did not occur here.

STANDARD OF REVIEW

Under Rule 8(a), a complaint must contain a "short and plain statement of the claim showing that the [plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a). This Court must accept as true all material factual allegations in the complaint, as well as reasonable inferences to be drawn from them, and must construe the complaint in the light most favorable to the plaintiff. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004) (citing *Karam v. City of Burbank*, 352 F.3d 1188, 1192 (9th Cir. 2003)); *Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). A district court, in weighing a motion to dismiss, asks "'not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 563 n.8, (2007) (quoting *Scheuer v. Rhoades*, 416 U.S. 232, 236 (1974)).

The Ninth Circuit, in addressing the pleading standard, has stated that Rule 8 does not impose a probability requirement at the pleading stage. *Eclectic Props. East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 999 (9th Cir. 2014); *Starr v. Baca*, 652 F.3d 1202, 1217 (9th Cir. 2011). Instead, the standard simply calls for the factual allegations asserted in the complaint to be sufficient to "raise a right to relief above a speculative level." *Eclectic Props. East, LLC*, 751 F.3d at 995 (quoting *Twombly*, 550 U.S. at 555).

Under the Federal Rules of Procedure, the burden of demonstrating that no claim has been presented in the pleadings rests fully with the defendant. *See Ballard v. Bank of Am., N.A.*, 2011 U.S. Dist. LEXIS 26507, 2011 WL 941006 (W.D. Wash. Mar. 15, 2011); *Wolf v. State*, 2010 U.S. Dist. LEXIS 14991, 2010 WL 715404 (W.D. Wash. Feb. 22, 2010).

In this case, the Complaint sets forth a short and plain statement of the grounds for the Court's jurisdiction in compliance with Rule 8(a)(1), which is the FDCPA. Furthermore, Defendant failed to meet its burden demonstrating that no claim has been presented by Ms. Leapai. Viewing the allegations asserted in the Complaint as true and in a light most favorable to Ms. Leapai, sufficient plausible facts were pleaded to establish Ms. Leapai's injury, Defendant's liability and Ms. Leapai's entitlement to relief under the FDCPA. Therefore, Ms. Leapai's Complaint successfully pleaded causes of action under the FDCPA and this Court has subject matter jurisdiction. Therefore, Defendant's Motion should be denied in its entirety.

LEGAL ARGUMENT

I. THE COMPLAINT SETS FORTH A CAUSE OF ACTION UNDER THE FDCPA

To state a claim under the FDCPA, a plaintiff must allege that: (1) she was the object of collection activity arising from a consumer debt; (2) the defendant is a FDCPA debt collector; and (3) the defendant engaged in FDCPA prohibited act or omission. *Monreal v. GMAC Mortg.*, LLC, 948 F. Supp. 2d 1069, 1084 (S.D. Cal. 2013).

In the Motion, Defendant argues that Ms. Leapai has not stated a cause of action under the FDCPA. There is nothing further from the truth for several reasons. First, the Complaint specifically sets forth that Defendant commenced collection efforts on a financial obligation that was primarily for personal, family or household purposes. In addition, Defendant knows full well that the report it made to the credit reporting agencies related to a consumer debt and who the creditor is. Second, Defendant violated the FDCPA because Ms. Leapai disputed the debt and Defendant refused to remove the debt or notate a dispute with the credit reporting agencies. As explained below, Ms. Leapai *does* have a cause of action against the Defendant for violations of the FDCPA.

The case of *Semper v. JBC Legal Group*, Case No. C04-2240L, 2005 U.S. Dist. LEXIS 33591, (W.D. Wash. Sept. 6, 2005) is illustrative on the matter and it is from *this* jurisdiction. In *Semper*, the consumer plaintiff alleged that a law firm acted improperly in collecting a debt arising out of a dishonored check. The parties filed cross-motions for summary judgment. Ultimately, the court determined that the law firm violated section 1692e(8) of the FDCPA because it failed to inform a credit reporting agency that the consumer had disputed the debt. The court opined that “the statute does not give debt collectors the authority to determine unilaterally whether a dispute has merit or whether to comply with the requirements of the FDCPA in a given case.” *Id* at *8. Defendant’s reliance upon case law from other jurisdictions is misguided and disingenuous.

Here, the Complaint meets all of the requisite criteria to state a claim under the FDCPA. Defendant’s conduct falls squarely within the realm of conduct the FDCPA sought to protect consumers from in accordance with *Semper*. Defendant was put on notice that Ms. Leapai disputed the debt reported to the credit agencies, but Defendant failed to communicate same to the credit agencies. Ms. Leapai was harmed by Defendant’s failure to take an affirmative act to properly rectify this situation and notify the credit agencies as to the status of the debt in question. Every month that Defendant failed to correct the information about the debt, the more harm is suffered by Ms. Leapai regardless of whether Defendant re-reports the debt.

When viewing facts in a light most favorable to Ms. Leapai, the non-moving party, Ms. Leapai suffered and continues to suffer from Defendant’s lack of proper disclosure and violation of the FDCPA. Accordingly, Ms. Leapai has stated a claim upon which relief can be granted and the Motion is inappropriate under the circumstances. The Motion should be denied in its entirety.

II. THE MOTION TO DISMISS SHOULD BE DENIED AS DEFENDANT VIOLATED 15 U.S.C. § 1692E(8)

Pursuant to section 1692e(8), the FDCPA does not permit inaction on the part of the debt collector when it knows that a debt is in fact disputed. As states above, the failure to act is actionable in *this* jurisdiction. *Semper v. JBC Legal Group*, Case No. C04-2240L, 2005 U.S. Dist. LEXIS 33591, (W.D. Wash. Sept. 6, 2005).

Here, by failing to remove or notate as disputed a debt reported by Defendant to a credit reporting agency, the negative impact upon Ms. Leapai is already set in stone. In essence, the cat is out of the bag at this point and remains so every month the debt is not property identified as disputed on Ms. Leapai's credit report.

When viewed this set of facts in the light most favorable to Ms. Leapai, the non-moving party, Defendant did in fact violate the FDCPA and it continues to do so. Accordingly, Ms. Leapai stated a claim upon which relief can be granted and Defendant's Motion should be denied.

CONCLUSION

For the reasons set forth above, Defendant's Motion should be denied in its entirety as Ms. Leapai has standing and the Complaint sets forth a cause of action establishing Defendant's liability under the FDCPA.

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Dated: August 10, 2016

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Certification of Service

I, hereby certify that a copy of the foregoing and any attachments hereto were mailed, postage prepaid on August 10, 2016 to the following counsel of record.

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